

Serial No. 10/719,525, filed 11/21/03

REMARKS

Claims 1-9 and 18-20 are presently pending in the application. Claims 10-17 have been cancelled by this Amendment. Claims 1, 18 and 19 are in independent form.

Paragraph 21 of the specification and Figure 6 have been amended to overcome the Examiner's objection to the drawings. No new matter was introduced. The carrier in claim 8 is described in paragraph 21. Further, the carrier is a well-known component in the industry. For example, a search of U.S. patents revealed hundreds of references to such carriers. U.S. Patent No. 5,976,051 is exemplary.

§102 rejection:

Claims 1 and 2 were rejected under §102(b) over Ishibashi.

Claim 1 has been amended to more clearly define the perimeter edge and its height. The perimeter edge is secured to a surface of the axle housing by a weld bead. Ishibashi discloses a dome having a first thickness that is equal to the height. Amended claim 1 specifies that the height extends from the surface of the axle housing and in a direction away from the surface. Amended claim 1 further specifies that the height is greater than the first thickness, which is provided by the dome-shaped portion. These limitations are not met by Ishibashi.

Claim 2 is additionally allowable because apparently what the Examiner considers to be the second thickness is actually greater than twice the first thickness in Ishibashi. Claim 2 specifies the second thickness is up to approximately twice the first thickness.

§103 rejections:

A. Claims 3 and 4 were rejected under §103 over Ishibashi in view of Pringle.

The Examiner acknowledges that Ishibashi does not disclose the reinforcing ribs. The Examiner argues that one of ordinary skill would provide the reinforcing ribs of Pringle to the

Serial No. 10/719,525, filed 11/21/03

cover of Ishibashi "in order to add strength and support to the cover." This motivation is not supported by the references. In fact, as stated by the Examiner in paragraph four of the specification, industry practice is to provide a cover that is too thick. Thus, reinforcing ribs would be unnecessary to the already unnecessarily thick dome. The Examiner has not provided any teachings in the references to support a *prima facie* case of obviousness in view of this. Accordingly, the rejection must be withdrawn.

B. Claim 8 was rejected under §103 over Ishibashi in view of Jones

The carrier is shown in phantom in Figure 6. Ishibashi does not disclose a carrier or a recessed boss. The Examiner relies upon Jones to provide this feature. The Examiner argues that it would be obvious to provide such a recess boss "to provide an access port to the axle assembly for service and maintenance." First, the element in Jones is not a carrier as understood by one of ordinary skill or by the plain dictionary definition, but is a plug. For this reason alone the rejection should not stand. Second, Ishibashi does not need an access port as the element 17 and its associated carrier may be removed to provide access. Accordingly, the "access port" of Jones provides no benefit.

C. Claims 9 and 18-20 were rejected under §103 over Ishibashi in view of the Metals Handbook.

To summarize the applicant's prior Responses, there is no motivation or suggestion to one of ordinary skill in the art to modify Ishibashi with the teachings of the Metals Handbook and, therefore, the combination is improper. The Examiner has previously argued that the motivation to modify Ishibashi with the Metals Handbook is "in order to have a stronger weld joint between the domed shape cover and the housing."

Serial No. 10/719,525, filed 11/21/03

The argued motivation was insufficient for at least two reasons. First, there is no teaching in either of the references indicating that the weld in Ishibashi is not strong enough or that it would benefit from a different weld configuration, let alone the specific weld configuration disclosed in the Metals Handbook. Second, Ishibashi requires that the two mating weld surfaces be tapered at the edges to receive the weld bead. Ishibashi does not have these tapered surfaces nor could these tapered surfaces be incorporated in the configuration of Ishibashi.

In response to the applicant's argument summarized above, the Examiner continues to argue that one of ordinary skill in the art would have made the combination because the applicant's claimed features are merely a matter of "design choice" and an "alternative equivalent" of a known terminal end of a domed-shaped cover. This statement is not sufficient to support an obviousness rejection using the combination and will be reversed on appeal. The Examiner now additionally argues with respect to claim 19, that Applicants claim a "mere reversal of parts" and, thus, claim 19 is obvious. This rejection is also improper.

1. design choice

The Examiner appears to be referencing MPEP 2144.04 XI C in attempting to rely upon "design choice." However, the MPEP clearly sets forth that when making a rejection based upon design choice, the prior art must still provide a motivation or reason for one of ordinary skill in the art to make the necessary changes to the reference. That is, simply stating it would be "design choice" is not enough. The Examiner has not rebutted the applicant's two arguments set forth above, and therefore, the rejection cannot stand.

Serial No. 10/719,525, filed 11/21/03

2. alternate equivalent

With regard to the Examiner's statement that the claimed features are an "alternate equivalent" of a known terminal end, the Examiner appears to be attempting to take official notice. The applicant challenges this statement, in which case the Examiner must provide a reference supporting that statement, as required by the MPEP. The Examiner is not permitted to merely conclude that something is an "alternate equivalent." The Examiner must, at the very least, establish with a reference that the prior art weld configuration is an equivalent. The Examiner's own judgment is not a substitute.

3. reversal of parts

The Examiner acknowledges that Ishibashi and the Metals Handbook do not disclose an outer perimeter edge adjacent to the terminal end that does not extend radially outward from the dome-shaped portion. The Examiner argues that it would be obvious because it would be a mere reversal of parts to provide the claimed limitation. The Examiner cites *In re Einstein*, which is not dispositive of the issue. Applicant directs the Examiner's attention to §2144.04 of the MPEP regarding the "rearrangement of parts." The MPEP clearly establishes that the Examiner cannot simply side step his obligation to establish a prima facie case of obviousness by simply alleging it would be a mere reversal or rearrangement of parts. The Examiner is still required to provide a motivation to one of ordinary skill to modify the base reference, here Ishibashi, to include the missing limitation. The Examiner has not done so. Accordingly, the rejection cannot stand.

Serial No. 10/719,525, filed 11/21/03

For the reasons set forth above, Applicant submits that the pending claims in the application are allowable. Applicant respectfully solicits allowance of these claims. If any fees or extensions of time are required, please charge to Deposit Account No. 50-1482.

Respectfully submitted
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Dated: 3/9/05